IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

WEDNESDAY, THE 20TH JUNE 2007 / 30TH JYAISHTA 1929

Crl.Rev.Pet.No. 644 of 1999()

CRA.290/1997 of ADDL. SESSIONS COURT, THRISSUR
SC.160/1995 of ASSISTANT SESSIONS COURT, IRINJALAKUDA

.....

REVN. PETITIONER: APPELLANT/ ACCUSED

KHADER, S/O.MADATHIPARAMBIL ABU,
THATHAPPILLI P.O. MANNAM,
NORTH PARUR.

BY ADV. SRI.BABU CHERUKARA
SRI.P.T.JOSEPH(PLANTHOTTAM)
SRI.K.B.BINU
SMT.ROSAMMA BABU
SRI.P.A.SALIM

RESPONDENTS: RESPONDENT/ COMPLAINANT

STATE OF KERALA,
REP.BY THE C.I. OF POLICE,
CHALAKUDY

BY PUBLIC PROSECUTOR SRI.AMJAD ALI

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 20/06/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

ORDER ON CMP. NO.2849/1999 IN CRL.RP NO.644/1999

DISMISSED

20.06.2007 **SD/- K.R.UDAYABHANU , JUDGE**

/TRUE COPY/

P.A. TO JUDGE

tss

K.R. UDAYABHANU, J.

CRL.R.P.NO.644 of 1999

DATED THIS THE 20th JUNE 2007

ORDER

The revision petitioner stands convicted for the offence under Section 326 I.P.C. and sentenced to undergo rigorous imprisonment for 12 months and to pay a compensation of Rs.5000/- to PW2 and in default to undergo rigorous imprisonment for three months.

2. The prosecution case is that on 19-8-1994 at about 11.45 p.m. In the temporary shed wherein the accused, the de facto complainant and other workers engaged in the building demolition work were put up, the accused inflicted blows with a nail bar uttering "you will be killed" and as a result of which the de facto complainant sustained grievous injuries. Pw2 is the victim and Pws.1 and 3 are the occurrence witnesses. PW2 has testified with respect to the incident that in the night they were about to lie down to sleep, there was a dispute in between the accused, who acted as a Supervisor, and the injured with respect to a sum of Rs.50/- which the accused has allegedly

incorporated in the account of the victim towards sale etc.of the demolished building materials. It is the prosecution case that PW2, the victim told the accused that he will reveal to Makkar the fact that the accused has clandestinely sold building materials. Makkar is the person who has engaged the workers including the accused and Pw2. It is testified by Pw2 that the accused threatened him that if he so revealed, he will be done to death. Thereafter, he could not get sleep and after sometime he got up, went to urinate and came back. When he was about to lie down the accused shouting that he will be killed, inflicted the blow with a metallic object. He cried aloud and the co-workers including Shibu got out and grappled with the accused to get hold of metallic object. Pw2 lost his consciousness thereafter. Pw1 is Aji, a co-worker, who rendered the F.I.S. PW2 was unconscious and hence the police recorded the statement of Pw1. He has deposed as to the incident and also as to the quarrel in between the accused and PW2 that took place at about 10 p.m. and also as to the fact that at about 11.45

p.m., they got up hearing the cries of Pw2 and he saw the accused inflicting the blow on the head of Pw2. Himself, Shibu and Biju (PW3) got up and himself and Shibu attempted to get hold of the metallic object and then the accused left it and ran away. Pw2 was taken to Government Hospital, Chalakudy and thereafter to the Medical Trust Hospital. Pw3, Biju has also testified as to the incident that he saw the accused hitting on the head of PW2 when he got up hearing the cries of PW2 at about 11.45 p.m. He has also stated that they took PW2 to Chalakudy Government Hospital in an autorikshaw and thereafter to the Medical Trust Hospital. He is also a signatory of Ext.P2 mahazar as per which the shirt and dhoti of PW2 was taken into custody. Pw4, the Doctor at the Government Hospital, Chalakudy proved Ext.P3 wound certificate and Pw5, Chief Medical officer of Medical Trust Hospital, Ernakulam testified in proof of Ext.P4 wound certificate-cum-discharge certificate wherein it is mentioned that at the time of admission, Pw2 was semi conscious and X-ray revealed non-depressed fracture, fronto

tempero-parietal region with sutural diastasis. C.T.scan revealed left tempero parietal extra dural haematoma and right temporal contusion. There was internal bleeding. He was subjected to craniotomy. Of course, the nail bar which was sent to the F.S.L.was not returned. As per Ext.P8 letter from the Director of Forensic Science Laboratory, Thiruvananthapuram, it is mentioned that the dress and the metallic rod sent for chemical examination were destroyed in an explosion in the F.S.L. Ext.P10 is the Chemical Analysis report wherein it is mentioned that in the weapon as well as in the dress, human blood was detected.

3. On a consideration of the evidence adduced in the matter, I find that the findings of the courts below as to the guilt of the accused do not call for any interference. The findings are fully supported by the evidence adduced in the matter. There was no infirmity in the evidence of Pws.1 to 3. Hence, the conviction is confirmed.

So far as the sentence is concerned, counsel for the revision petitioner has pleaded for leniency pointing out that the

revision petitioner has to look after his aged mother and his family consisting of his wife and college going daughter and further it is also pointed out that more than 12 years has elapsed since the date of the incident and if he is imprisoned, it will be devastating to the entire family. In the circumstances, I find that the sentence is liable to be modified. Hence, the sentence is modified to imprisonment till the rising of the court and to pay a compensation of Rs.1,00,000/-(Rupees one lakh only) to Pw2 and in default to undergo simple imprisonment for six months. The revision petitioner is granted three months time to remit the amount of compensation. He shall appear before the Principal Assistant Sessions Judge, Irinjalakuda on 22-9-2007 to receive sentence. The Crl.revision petition is disposed of accordingly.

K.R.UDAYABHANU, JUDGE

ks.

K.R.UDAYABHANU, J

CRL.R.P.NO.644 of 1999

ORDER

20-6-2007